

Message Text

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ACTION EA-10

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TO SECSTATE WASHDC 2252

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E.O. 11652: NA

TAGS: PINT, RP

SUBJECT: SENATOR AQUINO

REF: MANILA 4593

BEGIN SUMMARY: ATTORNEYS FOR AQUINO PRESENTED MOTION TO SUPREME COURT REQUESTING PETITION QUESTIONING THE LEGALITY OF MILITARY COMMISSION AND ITS PROCEDURES BE WITHDRAWN AND TEMPORARY RESTRAINING ORDER LIFTED. SOLICITOR GENERAL ARGUED AGAINST ALLOWING WITHDRAWAL OF PETITION. AQUINO'S ATTORNEYS DID NOT LIST ANTICIPATED CONDITIONS FOR STOPPING HUNGER STRIKE. SUPREME COURT PROBABLY WILL RULE ON LATEST MOVE BY AQUINO IN NEXT FEW DAYS. END SUMMARY.

1. IN 2 1/2 HOUR HEARING BEFORE SUPREME VCOURT ON 14 APRIL, ATTORNEYS FOR AQUINO PRESENTED MOTION TO WITHDRAW PETITION PENDING BEFORE COURT. PETITION HAD QUESTIONED LEGALITY OF MILITARY COMMISSION AS TO IS (1) CREATION, (2) JURISDICITION TO TRY CIVILIANS, (3) WHETHER PERPETUATION OF TESTIMONY IS LEGAL, AND (4) ORDER FOR AQUINO TO BE PRESENT. SUPREME COURT HAD ISSUED A TEMPORARY RESTRAINING ORDER AGAINST MILITARY COMMISSION UNTIL ABOVE ISSUES CONSIDERED BY COURT.

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ATTORNEYS ALSO REQUESTED RESTRAINING ORDER OF COURT

BE WITHDRAWN.

2. ATTORNEYS TANADA AND SALONGA NOT PRESENT BUT AQUINO REPRESENTED BY THREE YOUNGER ASSOCIATE ATTONEYS. COURT ASKED COUNSEL WHY AQUINO DESIRED TO WITHDRAW PETITION. IN REPLY, COUNSEL STATED THEY HAD NOT BEEN ABLE TO SEE AQUINO AND COULD ONLY REFER TO LETTER OF AQUINO WHICH HAD BEEN ATTACHED TO MANIFESTATION FILED WITH COURT.

3. LETTER REFERRED TO WAS SIX-PAGE RAMBLING STATEMENT BY AQUINO TO HIS WIFE IN WHICH HE REVIEWS THE HEARING BEFORE MILITARY COMMISSION, MAKES SOME OF HIS USUAL REMARKS CONCERNING MARCOS, STATES THE ONLY WAY HE CAN FIGHT SUCH REPRESSION IS BY HUNGER STRIKE AND SPECIFICALLY PROTESTED AGAINST (1) TRIAL OF CIVILIANS BY MILITARY, (2) LACK OF JUDICIAL INDEPENDENCE, (3) ABSENCE OF FREE PRESS AND (4) CONTINUATION OF MARTIAL LAW. THESE POINTS WERE NOT REFERRED TO IN THE HEARING BY AQUINO'S ATTORNEYS.

4. IN RELATION TO ATTORNEYS ACCESS TO AQUINO, IT WAS DETERMINED BY COURT THAT AQUINO HAD FULL, FREE AND DAILY ACCESS TO TANADA AND SALONGA. IT THEN PROVIDED SIMILAR ACCESS BY THREE ATTORNEYS REPRESENTING AQUINO AT PRESENT SUPREME COURT HEARING.

5. SOL. GEN. THEN ARGUED AGAINST ALLOWING AQUINO TO WITHDRAW PETITION STATING ISSUES TOO IMPORTANT. HE STRESSED THAT MOTION TO WITHDRAW WAS LAST MINUTE STRATEGY BY AQUINO IN WHICH HE HOPED TO ACHIEVE HIS AIMS THROUGH A HUNGER STRIKE. SOL. GEN. URGED COURT TO IMMEDIATELY RULE ON PETITION. SUPREME COURT THEN ORDERED SOL. GEN. TO FILE WRITTEN MEMORANDUM ON GOVERNMENT POSITION BY AFTERNOON AND FOR AQUINO'S ATTORNEYS TO DETERMINE IF HE WISHED TO FILE ANY FURTHER DOCUMENTS WITH COURT.

6. COMMENT: IN A RATHER CONFUSED HEARING BEFORE THE SUPREME COURT IT WAS OBVIOUS THAT SALONGA AND TANADA LIMITED OFFICIAL USE

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HAD DELIBERATELY ABSENTED THEMSELVES TO ALLOW JUNIOR ASSOCIATES, WHO HAD NO PERSONAL CONTACT WITH AQUINO AND WHO COULD NOT ANSWER THE COURT'S QUESTIONS AS TO REASONS FOR WITHDRAWAL, TO PRESENT MOTION. COURT MADE CLEAR IT DID NOT APPRECIATE SUCH TACTICS. COURT NOW CONFRONTED WITH OPTIONS OF FINESSING RULING ON LEGALITY OF MILITARY COMMISSION BY DISMISSING PETITION OR BITING THE BULLET. COURT DID EVIDENCE

SOME CONCERN OVER AQUINO'S PHYSICAL CONDITION BY
ASKING SOL. GEN. QUOTE CAN GOVERNMENT FORCE HIM TO
TAKE FOOD SO HE COULD ATTEND TRIAL OR WILL WE JUST
ALLOW HIM TO DIE. UNQUOTE SOL.GEN STATED HE WAS
NOT PREPARED TO ANSWER THAT BUT MADE NON SEQUITOR THAT
TO ATTEMPT SUICIDE WAS A VIOLATION OF THE CRIMINAL
CODE. MATTER WAS THEN NOT PURSUED. ANTICIPATE THAT
COURT WILL RULE ON LATEST MOVE BY AQUINO IN NEXT FEW DAYS.

7. COMMENT: CONTRARY TO OUR EXPECTATIONS,
AQUINO DID NOT TAKE ADVANTAGE OF THE HEARING TO LIST HIS
CONDITIONS FOR ENDING HIS FAST THAT WE ANTICIPATED REFTEL.
UNLESS HIS ATTORNEYS BUMBLED, WHICH SEEMS HIGHLY UNLIKELY,
AQUINO APPARENTLY DECIDED TO DEFER THAT TACTIC FOR THE
TIME BEING.

8. MANIFESTATION FILED BY AQUINO'S LAWYERS WITH
ABOVE LETTER POUCHED EA/PHL.
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